A **SHELL MALAYSIA TRADING SDN BHD**

v.

PENTADBIR TANAH WILAYAH PERSEKUTUAN

B HIGH COURT MALAYA, KUALA LUMPUR
VAZEER ALAM MYDIN JC
[LAND REFERENCE NO: S15NCVC-6-02-2012]
24 APRIL 2013

C ***LAND LAW:*** *Acquisition of land - Acquisition by government - Compensation payable in land reference - Interest of sublease - Whether compensation to be based on market value at time of acquisition - Whether premium/rental could be used as basis to calculate value of interest in land - Whether Land Acquisition Act 1960 allowed claims for* D *loss of actual earnings - Land Acquisition Act 1960, s. 12(1), First Schedule, paras. 2(d), 2(e)*

LAND LAW: *Acquisition of land - Methods of valuation - Whether calculation of market value of land and market value of building and structures correct - Whether cost for removal could be claimed - Whether* E *incurred in discharge of statutory duty*

This was a land reference pursuant to s. 36 of the Land Acquisition Act 1960 ('the Act'). Syarikat Pemodalan Kebangsaan ('SPK') was the registered proprietor of a leasehold interest on a F piece of land ('the land'), utilised to operate a fuel and service station, for a period of 60 years. A sublease with an option to renew was created between SPK and Shell Malaysia Trading Sdn Bhd ('the applicant') *via* a sublease agreement dated 18 September 1995 with an option to renew for a further term of 30 G years. The applicant then, *vide* a licence agreement dated 21 February 2007, appointed Syarikat Arbi Sdn Bhd ('the licensee') to operate the station for a period of five years which commenced on 1 January 2007 and expired on 31 December 2011. Subsequently the land was acquired by the Federal Government H for the Mass Rapid Transit Project ('the project'). The applicant had 14.6 years of the sublease remained on the land as at the date of publication of the gazette notification under s. 4 of the Act. The respondent conducted an enquiry of the compensation to be awarded to the parties who had interest on the land and I made award of compensation accordingly. However, the applicant was dissatisfied with the compensation and contended that the compensation was undervalued. The applicant argued that the

approach to value the land was incorrect and submitted that the assessment of compensation must be made based on market value of the land, in accordance to the principles which related to the determination of compensation pursuant to the First Schedule of the Act which flowed from s. 12(1) of the Act.

Held (allowing land reference application):

(1) From the plain reading of s. 12(1) of the Act and the First Schedule of the Act, it is patent that in any land acquisition the persons interested in the land are entitled to receive compensation based on market value of the land at the time of acquisition. It does not matter that the interest is that of a registered owner as per title or licence or sublease pursuant to an agreement. The use of premium/rental paid as a basis for calculation to value the applicant's interest in the land was wrong. The correct valuation method was to assess the market value of the remaining period of the lease. Therefore, the applicant's valuer had used the correct method. (paras 12, 13 & 15)

(2) Both valuers for the applicant and the respondent had not taken into account the fact that the applicant's interest in the building would run in tandem with the remainder of the sublease *ie*, 14.6 years. Therefore, it was appropriate to value the applicant's interest in totality for the land and buildings as a whole for the remainder of the sublease. (para 25)

(3) Prior to the amendment of the Act, para. 2(d) of the First Schedule clearly provided for compensation of loss of earnings as the words "or his actual earnings" was included as one of the matters that had to be considered to determine the compensation. However, the words "or his actual earnings" in para. 2(d) was removed to address the issue of repetitive statutory provisions as the same was already provided in para. 2(e) of the First Schedule. Therefore, the applicant was still entitled to compensation for loss of profits by virtue of para. 2(e). (paras 28-30)

(4) However, the applicant's valuer had inaccurately calculated the discounted net income for the first two years. The applicant's valuer should have deducted the annual rental and a further 5% of gross income each year as administrative cost incurred by the business. (para 33)

(5) The applicants claim was for cost of decommissioning of the station and was not an outlay, addition or improvement to the land. Such decommissioning was mandated by law and was required to be done by the department of environment. The cost of removal borne by the applicant was recoverable in full as it was a reasonable expense incurred by the applicant as a result of the acquisition. Further, it was incurred in discharge of the applicant's statutory duty under the relevant environmental Act and Regulations. (para 35)

[Respondent to pay applicant RM1,401,439.53 as additional compensation]

Case(s) referred to:

Amar Singh Sundar Singh & Ors v. Jivanjit Kaur Sohan Singh [2010] 7 CLJ 285 CA ***(refd)***

Bukit Rajah Rubber Company Ltd v. Collector of Land Revenue, Klang [1967] 1 LNS 12 HC ***(refd)***

Chin Choy & Ors v. Collector of Stamp Duties [1978] 1 LNS 26 FC ***(refd)***

Collector of Land Revenue, Kuantan v. Noor Chahaya Abdul Majid [1978] 1 LNS 157 FC ***(refd)***

Guan Seng Co Ltd, Taiping v. Pentadbir Tanah Daerah Larut dan Matang, Taiping [1993] 1 LNS 111 HC ***(refd)***

Highlands Malaya Plantations Ltd v. Collector of Land Revenue, Petaling [1981] CLJ 174A; [1981] CLJ (Rep) 151 HC ***(refd)***

Khoo Peng Loong & Ors v. Superintendent of Lands and Surveys, Third Division Sibu [1966] 1 LNS 214 HC ***(refd)***

Kok Keat & Anor v. Pentadbir Tanah Daerah Petaling [1994] 4 CLJ 718 HC ***(refd)***

Nanyang Manufacturing Co v. The Collector of Land Revenue, Johore [1953] 1 LNS 59 HC ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 1(1A) First Schedule, 4, 8, 12(1), 14(5), 36

For the applicant - Felix Raj (Josephine Cheng with him); M/s Shaikh David Raj

For the respondent - Cindy Jasmine; FC

Reported by Sandra Gabriel

JUDGMENT

Vazeer Alam Mydin JC:

[1] This is a land reference pursuant to s. 36 of the Land Acquisition Act 1960 ("the Act"). The facts of the matter is as follows. Syarikat Pemodalan Kebangsaan ("SPK") was the registered proprietor of a leasehold interest on a piece of land measuring approximately 1,503.75 square meters (16,195 square feet) identified as Lot 137 (521), Seksyen 90, Bandar Kuala Lumpur, Daerah Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur and held under title No. PN 23538 ("the land"). The lease on the title was for a period of 60 years expiring on 22 January 2055 ("the main lease").

[2] SPK had *vide* a sub-lease agreement dated 18 September 1995 ("the sub lease agreement") leased the land to the applicant herein for a term of 30 years expiring on 18 September 2025 with an option to renew for a further term of 30 years ("the sub lease"). The land was utilised to operate a fuel and service station. And in this regard the applicant had *vide* a license agreement dated 21 February 2007 appointed Syarikat Arbi Sdn Bhd ("the licensee") as licensee to operate the said station for a period of five years commencing on 1 January 2007 and expiring on 31 December 2011.

[3] The land was acquired by the Federal Government for the Mass Rapid Transit Project ("the project"). The requisite notifications under ss. 4 and 8 of the Land Acquisition Act 1960 ("the Act") were published in the Federal Government Gazette on 11 February 2011 and 27 June 2011 respectively. As at the date of publication of the s. 4 gazette notification on 11 February 2011, the applicant had about 14.6 years of the sub lease remaining.

[4] The respondent conducted an enquiry pursuant to the provisions of the Act to assess the amount of compensation payable to the persons who had an interest on the land. At the conclusion of the enquiry, the respondent on 6 December 2011 made the following award of compensation to the following parties:

A (i) SPK as the registered owner, the sum of RM1,706,073.38;

(ii) the applicant as the lessee, the sum of RM2,267,400; and

(iii) the licensee as the station operator, the sum of RM234,794.52.

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[5] The respondent's award is found at p. 11 of the court reference bundle – encl. 1 and reads as follows:

Perintah Award

C Saya telah meneliti keterangan-keterangan yang ada dihadapan saya dan berpuas hati dengan keterangan-keterangan itu. Berdasarkan kepada prinsip-prinsip yang telah ditetapkan dalam Jadual Pertama Akta Pengambilan Tanah, 1960 dan setelah mengambil kira pendapat bertulis yang diberikan oleh Pengarah Jabatan Penilaian D dan Perkhidmatan Harta Wilayah Persekutuan Kuala Lumpur seperti yang dinyatakan di dalam laporan nilaian. Tuntutan dari pihak atau orang berkepentingan maka saya memutuskan bahawa nilai tanah mengikut harga pasaran ialah RM1,620.00 semeter persegi. Dengan ini saya memerintahkan bayaran pampasan kepada orang-orang yang berkepentingan untuk kawasan yang terlibat E dengan pengambilan seluas 1503.749 m^2 adalah seperti berikut:

Tuan Tanah

RM1,620 X 3,127m^2 = RM2,436,073.30 (bagi keseluruhan nilai tanah. Ditolak dengan perjanjian pajakan kepada Shell F Malaysia Trading Sdn Bhd iaitu: RM1,500,000 selama 30 tahun menjadikan RM50,000.00 setahun. Pajakan berbaki 14.6 tahun bersamaan dengan RM730,000.00. Award akhir kepada tuan tanah adalah RM1,706,073.38.

Pemajak

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Nilai tanah yang dibayar adalah bersamaan baki tempoh pajakan seperti di atas. Award akhir bagi nilai tanah kepada pemajak adalah RM730,000.00. Bagi pampasan kepada struktur dan bangunan adalah RM1,327,400.00. Bagi H pampasan kepada penjejasan perniagaan adalah RM210,000.00.

I

Penyewa

Pampasan kepada operator stesen minyak adalah seperti berikut:

> Bayaran untuk kos pindah adalah RM4,765.88. Bayaran untuk sewa sementara RM16,800.00. Bayaran bagi kerosakan akibat pengambilan tanah RM31,658.80. Bayaran bagi ganguan operasi yang dialami operator RM163,569.84. Bayaran kepada penjejasan kepada perniagaan penyewa adalah RM18,000.00.

[6] The applicant being dissatisfied with the award, lodged the Form N on 13 February 2012 as provided in the Act. The table below shows the comparative analysis of the applicant's claim, the valuation by the Government value, the valuation by the applicant's valuer and the respondent's award.

	Item	**Applicant's Claim (RM)**	**Government Valuation (RM)**	**Applicant's Valuation (RM)**	**Respondent's Award (RM)**
1	Market Value of the Lessee's interest	2,346,970	700,000	1,619,500	730,000
2	Market Value of Buildings & Structures	1,902,050	1,847,790	1,871,170	1,327,400
3	Extinguishment of Business	1,571,000	–	1,500,000	210,000
4	Removal Costs	80,000	–	75,378.53	–
5	Incidental Costs	125,409	–	–	–
6	Loss of Rent (Six Months)	–	5,700	–	–
	Total	6,025,429	2,553,490	5,066,048.53	2,267,400

[7] The applicant has confined the issues in this reference to following main heads of claim, that is:

(a) market value of the applicant's interest in the remainder of the lease;

(b) market value of the buildings and structures on the land;

(c) extinguishment of business;

(d) removal costs; and

(e) the valuer's fees.

Market Value Of The Land

[8] The market value of the land, which includes the interest of both SPK as owner and the applicant as the lessee has been appraised by both the Government valuer from the Jabatan Penilaian dan Perkhidmatan Harta ("JPPH") and the applicant's valuer, M/s Knight Frank Ooi & Zaharin Sdn Bhd ("Knight Frank"). However, both valuers have taken different approaches in determining the market value of the applicant's interest as lessee. The Government valuer has taken the amount of annual lease rental paid by the applicant pursuant to the sub lease agreement as the basis for determining the applicant's interest in the land. Pursuant to the sub lease agreement, the applicant has paid the sum of RM1,500,000 in advance to SPK as the lease rental for the entire 30 year lease period, that is at the rate of RM50,000 per year. The Government valuer on the has multiplied the annual rental of RM50,000 for the remaining 14 years of the lease and has come up with the figure of RM700,000 as compensation for the applicant's interest on the land. The respondent has based his award on this formula and awarded the sum of RM730,000 as compensation for the applicant's remaining 14.6 years of interest on the land.

[9] Mr Felix Raj, counsel for the applicant, vehemently argues that this is an incorrect approach to valuing the applicant's interest in the land. Mr Raj submits that the assessment of compensation must be made based on market value of the land in accordance to the principles relating to the determination of compensation as laid down in the First Schedule of the Act. This flows from the provision in s. 12(1) of the Act which states that:

On the date appointed under subsection 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule:

Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14.

The relevant provisions of the First Schedule to the Act as is applicable to this case is produced below:

1. Market value.

(1) For the purposes of this Act the term "market value" where applied to any scheduled land shall mean the market value of such land:

(a) at the date of publication in the Gazette of the notification under section 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under section 8 in respect of all or some part of the land in the locality specified; or

(b) in other cases, at the date of the publication in the Gazette of the declaration made under section 8.

(i) In assessing the market value of any scheduled land, the valuer may use any suitable method of valuation to arrive at the market value provided that regard may be had to the prices paid for the recent sales of lands with similar characteristics as the scheduled land which are situated within the vicinity of the scheduled land and with particular consideration being given to the last transaction on the scheduled land within two years from the date with reference to which the scheduled land is to be assessed under subparagraph (1).

(ii) ...

(iii) In assessing the market value of any scheduled land, regard shall not be had to the evidence of any sales transactions effected after the date with reference to which the scheduled land is to be assessed under subparagraph (1).

A (iv) Where the scheduled land to be acquired is held under a title for a period of years, in assessing the market value, regard may be had to the date of expiry of the lease as shown in the document of title, but regard shall not be had to the likelihood of a subsequent alienation to the person or body who is the proprietor thereof immediately before the expiry of the lease.

B

[10] Mr Raj further submits that the only method of determining the compensation for a person's interest in any land acquired under the Act is based on the market value and is not based C upon the premium paid or the advance rental paid as in this case. Ms Cindy Jasmine FC, learned counsel for the respondent argues to the contrary and states that the First Schedule to the Act is only applicable in determining the value of the interest of a registered owner and not that of a lessee such as the applicant in D this case.

[11] Having considered both arguments of counsel for the applicant and respondent, we are in agreement with Mr Raj. The method of determining compensation for any interest in an E acquired land is as provided in the Act, and in particular s. 12(1) read together with the First Schedule of the Act. Interpreting and applying the words and phrases of a statute in their ordinary meaning is the first and most elementary rule of statutory construction (see Federal Court case of *Chin Choy & Ors v. Collector of Stamp Duties* [1978] 1 LNS 26; [1979] 1 MLJ 69). F

[12] In applying that principle of statutory construction, from the plain reading of s. 12(1) and the First Schedule to the Act, it is patent that in any land acquisition the persons interested in the land are entitled to receive compensation based on the market G value of the land at the material time of acquisition. We find that in determining such interest it does not matter whether the interest is that of a registered owner as per title or lessee or sub-lessee pursuant to an agreement between the registered owner and lessee or as between lessee and sub-lessee. The method of H computation is the same, that is, based on market value and not on the premium or rental paid by the lessee or sub-lessee.

[13] In this regard, we find that the use of the premium/rental paid by the applicant as the basis for calculating the value of the I applicant's interest in the land is wrong and the use of such method of calculation by the respondent's valuer and the respondent himself is contrary to established principles of law.

[14] The Government valuer in his written reply at paras. 7.2 and 9.2 argues that the market value of the applicant's remaining term should be the historical agreed rental per annum multiplied by the remaining years of the lease and the respondent has erroneously adopted this approach. If the respondent's approach is taken, a valuation of a 99 year leasehold land with 60 years remaining will be 60 years multiplied by the annualised premium paid when the lease was first granted by the state. This is certainly not an appropriate method of valuation of the remainder of the lease and would be contrary to the principles stated in the First Schedule to the Act and is against judicial precedent. Whether the lease is granted by the state or a lease granted by a registered owner, the valuation method remains the same, that is, to assess the market value of the remaining period of the lease. We reject the respondent's approach of using the premium/rental paid method in determining the value of compensation for a leasehold interest, in land acquisition cases.

[15] In this regard, we find that the applicant's valuer has used the correct method. We agree that compensation must be calculated based on market value of the land. The registered owner, SPK, has a leasehold interest in the land for a period of 60 years expiring on 22 January 2055 as reflected in the title. The applicant was granted a sub-lease by SPK for a period of 30 years expiring on 18 September 2025. It is trite that a lease creates an interest in the land, which, on dispossession, entitles the lessee to recover possession of the land (see the Court of Appeal decision in *Amar Singh Sundar Singh & Ors v. Jivanjit Kaur Sohan Singh* [2010] 7 CLJ 285 at p. 313).

[16] Here the registered owner, SPK, has transferred its use of the land to the applicant by way of a 30 years lease. The registered owner has no right of use of the land during this lease period and the applicant enjoys all rights to the land during the subsistence of the sub lease. As a general proposition, the value of the land is in its present and potential use. The applicant was using the land to operate a fuel and service station. Therefore, the valuation has to be done taking into account the land use and comparing it with the value of similar land.

[17] As at the date of the s. 4 notification, the title had an unexpired lease period of 44 years and out of that the first 14.6 years are the remainder of the applicant's sub lease. As such, there are two persons with interest on the land but for different periods. In such circumstance, the method to compute the respective interest of the registered owner, SPK, and the lessee, the applicant, would be to first ascertain the market value of the entire remaining 44 years of the 60 years main lease in the title. The first 14.6 years of the remaining 44 years would belong to the applicant by virtue of the sub lease and the balance would be the registered owner's interest. The registered owner only has a deferred interest in the land, ie, after the expiry of 14.6 years. The fact that the sub lease has an option to renew for a further term of 30 years is of no consequence in determining a person's interest in land acquisition cases. Such prospective renewals are not to be taken into consideration in calculating compensation by virtue of the provisions of para. 1D of the First Schedule to the Act.

[18] We agree with counsel for the applicant that it would, therefore, be appropriate to assess the market value of the land as a whole, ie, a 44 years leasehold interest, then defer this for 14.6 years at an appropriate rate to arrive at the registered owner's interest. The market value less the registered owner's interest would then be the market value of the applicant's interest.

[19] In determining the market value of the land, for the remaining 44 years of main lease, the applicant's valuer has used the comparison method. Section 1(1A) of the First Schedule to the Act provides that in assessing the market value of any acquired land, the valuer may use any suitable method of valuation by having regard to comparable recent sales (preferably within the last 24 months from the date of reference) of lands with similar characteristics situated within the vicinity of the acquired land. This method of valuation is generally referred to as the comparison or comparable method and the courts have consistently adopted this method to determine market value of an acquired land. (See cases of *Nanyang Manufacturing Co v. The Collector of Land Revenue, Johore* [1953] 1 LNS 59; [1954] 20 MLJ 69; *Bukit Rajah Rubber Company Ltd v. Collector of Land Revenue, Klang* [1967] 1 LNS 12; [1968] 1 MLJ 176; *Khoo Peng Loong & Ors v. Superintendent of Lands and Surveys, Third Division Sibu* [1966] 1 LNS 214; [1966] 2 MLJ 156; *Highlands Malaya*

Plantations Ltd v. Collector of Land Revenue, Petaling [1981] CLJ 174A; [1981] CLJ (Rep) 151; *Kok Keat & Anor. v. Pentadbir Tanah Daerah Petaling* [1994] 4 CLJ 718; [1994] 3 MLJ 604; *Guan Seng Co Ltd, Taiping v. Pentadbir Tanah Daerah Larut dan Matang, Taiping* [1993] 1 LNS 111; [1994] 1 MLJ 4; and *Collector of Land Revenue, Kuantan v. Noor Chahaya Abdul Majid* [1978] 1 LNS 157; [1979] 1 MLJ 180).

[20] Both the Government valuer and the applicant's valuer have used the comparable method in arriving at the market value of remainder of the main lease. In fact both valuers have used three similar comparables and the value per square feet is almost the same. The respective valuations and the respondent's award in this regard is shown in the table below:

Government Valuation	Applicant's Valuation	Respondent's Award
RM3,308,347.80 - based on RM2,200 per square meter (RM204.38 per square feet)	RM3,239,000 - based on RM2,152.78 per square meter (RM200 per square feet)	RM2,436,037.30 - based on RM1,620 per square meter (RM150.50 per square feet)

[21] The respondent's basis for determining the market value of the land at RM1,620 per meter square (RM151.35 per square foot) is found at p. 9 of the court reference bundle - encl. 1 under the heading "Nota Tambahan" and he states as follows:

> Nilai tanah yang diminta oleh tuan tanah adalah sebanyak RM1,629 per square meter, manakala nilaian yang dicadangkan oleh JPPH adalah RM1,520/m^2. Pentadbir tanah mendapati nilaian yang munasabah adalah RM1,620 per square meter berdasarkan bukti-bukti yang ditunjukkan oleh kedua-dua penilai menghampiri nilai tersebut.

[22] It is evident from the respondent's award and the Nota Tambahan that the respondent has fixed RM1,620 per square meter as the total value of the land (comprising both SPK's and the applicant's interest) and multiplied it by 3,127.77m^2 to derive at the sum of RM2,436,073.30. This, we find is an erroneous determination on the part of the respondent for several reasons. Firstly, the respondent had misconstrued that the Government valuer had provided a valuation of RM1,520 per square meter when in fact the Government valuation report provided for

RM2,200 per square meter. The figure 1520 is the original area of the land stipulated in the title (before being reduced to 1503.749 square meters by an earlier acquisition of a portion of the land). The respondent seems to have mistaken the original area of the land to be the market value assessed by the Government valuer. This is a clear error on the face of the records. Secondly, SPK had requested for RM1,629.22 per square meter (RM151.35 per square foot) as the market value of SPK's interest in the land. However, the respondent has mistaken this figure to be the entire market value of the land (inclusive of the applicant's interest). Thirdly, in calculating SPK's compensation, the respondent has taken the area of the land to be 3,127.77 square meters when in fact the area acquired, being the entire area shown in the title, was only 1503.749 square meters. Clearly, there has been an over payment of compensation to SPK.

[23] In assessing the applicant's interest, the applicant's valuer has adopted the direct comparison method using three comparables. The Government valuer has also used these same comparables in arriving at his valuation of SPK's interest. Of the three comparables, the second involves a transacted sale on 23 July 2010 of a leasehold interest of land measuring 22,399.70 square feet with 42 years remaining that was used for a fuel and service station. The transacted price for that sale is RM4,368,000. That works out to RM195 per square foot at the time of transaction. And with a 5% adjustment in value for passage for time, the valuer has arrived at the figure of RM214.99 per square feet. The applicant's valuer then rounds up the market value of the land at RM200 for the whole land, comprising SPK's and the applicant's interest, as fair indicative market value. The valuer then proceeds to ascertain the respective interest of SPK and the applicant by making the necessary adjustments as reflected in the table in Appendix E of the applicant's valuer's report. The applicant's interest is determined to be RM100 per square foot for the remainder of 14.6 years of the lease after a 50% adjustment. Therefore, taking the rate of RM100 per square foot and multiplying by 16,195 square foot of the land we would get RM1,619,500 which is the market value of the applicant's interest in the land. We accept this computation as being reflective of the market value of the applicant's interest in the land, for this is calculated based on established principles.

Market Value Of Building And Structures

[24] The market value of the buildings and structures assessed by the Government valuer is RM1,847,790 whereas the applicant's valuer assessed it as RM1,871,170. Both valuers have used the "depreciated replacement cost" method, which is an accepted method to value buildings. We find that the variance in value between the two valuation is not much. However, the respondent only awarded RM1,327,400 under this head and no explanation has been proffered for this reduced amount. The Government valuer's rebuttal report concedes that at the very least the sum of RM1,847,790 ought to be allowed.

[25] Having said that, upon further examination of the method employed by both valuers, we find that both of them have not taken into account the fact that the applicant's interest in the buildings and structures would run in tandem with the remainder of the sub lease, ie, for 14.6 years only. When the sub lease expires, the applicant will not have any interest on the land or the buildings and structures. Therefore, it would be more appropriate to value the applicant's interest in totality for the land and buildings as a whole for the remainder of the sub lease. We find that the is no cogent reason to reject the valuation of the applicant's valuer in this regard and in accepting that the value of the buildings and structures is RM1,871,170, the calculation of the applicant's interest in the land and buildings as a whole would be as follows:

The value of the remainder 44 years of the state lease of the land area of 16,195 sq ft @ RM200 per sq ft	RM3,239,000
Add value of buildings	**RM1,871,170**
Value of land and buildings	RM5,110,170
Adjustment for applicant's interest taking into account the remaining 14.6 years	x 0.50
The applicant's interest in the land and buildings	**RM2,555,085**

[26] In light of the above, based on market value, we find that the reasonable compensation in respect of the applicant's interest in the land and buildings is RM2,555,085.

Loss Of Profit/Total Extinguishment Of Business

[27] The applicant had asked for the sum of RM1,500,000 under this head. The Government valuer had recommended that there be no award for loss of profit or extinguishment of business on the basis that there is no clear provision in the Act allowing for the same. In any event, the respondent had allowed the sum of RM210,000 under this head without providing any basis or reason as to how this figure was derived.

[28] On the issue of whether the Act allows for compensation for loss of profit or extinguishment of business, we make the following finding. Prior to the latest amendment to the Act (*vide* Amendment Act A999), para. 2(d) of the First Schedule clearly provided for compensation for loss of earnings as it included the words "or his actual earnings" as one of the matters to be considered in determining compensation. However, as a result the passing of the Amendment Act A999, the words 'or his actual earnings' in para. 2(d) was removed on the grounds that the same was already provided for in para. 2(e) of the First Schedule. The rationale for this is amendment is provided at p. 34 of the Amendment Bill in the following terms:

> Subparagraph 2(d) of the First Schedule has also been amended to delete the words 'or his actual earnings' since these words are unnecessary considering that the matter is already covered by the existing Subparagraph 2(e).

[29] Subparagraph 2(e) of the First Schedule reads:

> 2. In determining the amount of compensation to be awarded for any scheduled land acquisition under this Act there shall be taken into consideration the following matters and no others:
>
> …
>
> (e) if, in consequence of the acquisition, he is or will be compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

[30] We are of the opinion that even though the words 'or his actual earnings' have been removed from para. 2(d) of the First Schedule, the applicant would still be entitled to compensation for loss of profits by virtue of the provisions of para. 2(e). From the explanation given in item 30 of the explanatory statement to the Bill amending the Act, it is clear that the intention of parliament in removing the words 'or his actual earnings' in para. 2(d) of the First Schedule was not to remove loss of earnings as a head of compensation but merely to address the issue of repetitive statutory provisions.

[31] The applicant submits that there is total extinguishment of business and claims loss of income for the remaining tenure of the lease until 2026. The applicant's valuer has calculated loss of business profits for a period of 14.6 years using the discounted cash flow method (as in Appendix 'O' to the applicant's valuation report) and has come to a figure of RM4,996,202.

[32] However, we are of the opinion that the applicant's business need not be shut down completely. The applicant can easily relocate the business to another site. Fuel and filling stations are in ever increasing demand with the constant increase in vehicle population in the country. A reasonable time period for relocation of a business such as this would be two years; taking into account that the applicant would have to identify new premises, apply for the relevant permits and licenses from the authorities as well as construct the new station.

[33] The applicant's valuer has calculated the discounted net income for the first two years (2011 and 2012) to be RM596,860 and RM580,960 respectively. However, this is not accurate. The applicant's valuer should also deduct the annual rental of RM50,000 and deduct a further 5% of gross income each year as administrative cost incurred by the business. This would give a rounded up figure of RM1,027,000, which would be the compensation sum that the applicant is entitled to for loss of profits. We find that this is reasonable in the circumstance.

Removal Cost

[34] The applicant has made a claim for actual removal cost amounting to RM75,378.53 for decommissioning of the station, including removal of improvements, pipes, compressors and pump dispensers, which had been borne by the applicant. The

respondent failed to make an award for this claim on the basis that no evidence has been given on the cost of demolition. The respondent's valuer states that the applicant is not entitled to this claim because the process of demolition was carried out and cost incurred after the date of the s. 4 Gazette notification. Counsel for the respondent relies on para. 3 of First Schedule which states that compensation cannot be awarded or recovered in respect of any outlay on additions or improvements to the land acquired unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair.

[35] We find that the respondent's counsel's submission is misplaced. The applicant's claim is for cost of decommissioning of the station, including removal of underground tanks, pipes, compressors and pump dispensers and is not an outlay, addition or improvement to the land. Such decommissioning and proper disposal is mandated by law and is required to be done by the department of environment. The full demolition, tank purging, degassing works and disposal of underground tanks was carried out by Sittal & Associates Metals Sdn Bhd as found in the report attached as Appendix 'P' to the applicant's valuation report. We find that the sum of RM75,378.53, being the cost of removal borne by the applicant is recoverable in full as this is reasonable expense incurred by the applicant occasioned by the acquisition. Further, it is incurred in discharge of the applicant's statutory duty under the relevant environmental Act and Regulations.

Valuer's Fee

[36] The valuer's fee of RM11,376 is recoverable under s. 14(5) of the Act, and is therefore, appropriately claimed and allowed.

Conclusion

[37] In conclusion the additional compensation payable to the applicant would be as follows:

Market value of land & buildings	RM	2,555,085
Loss of profits	RM	1,027,000
Removal cost	RM	75,378.53
Valuer's fee	RM	11,376

Total	RM3,668,839.53
Less respondent's award	RM 2,267,400
Additional compensation	RM1,401,439.53

[38] In the premise of the foregoing, the applicant's land reference is allowed and the following orders are made:

(a) the respondent pay the applicant a sum of RM1,401,439.53 as additional compensation;

(b) that interest on the additional compensation at the rate of 8% per annum be paid from the date of the Form K to date of full and final settlement; and

(c) the assessor's fee shall be borne and paid by the respondent.